

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHAD HOFSTAD,

Case No. 17-cv-100-pp

Plaintiff,

v.

NANCY BERRYHILL,
Acting Commissioner of the
Social Security Administration,¹

Defendant.

**ORDER GRANTING PLAINTIFF'S
REQUEST TO PROCEED *IN FORMA PAUPERIS* (DKT. NO. 3)**

The plaintiff has filed a complaint asking that the court review the Commissioner's denial of his Social Security Disability Insurance claims. Dkt. No. 1. With the complaint, the plaintiff filed an affidavit in support of his request that the court allow him to proceed with the case without paying the filing fee. Dkt. No. 3. In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

In the affidavit, the plaintiff indicates that he does not work and receives no monthly income. Dkt. No. 3, at 1-2. He is not married and supports no dependents. *Id.* at 1. He owns his home, valued at \$8,000, and a car, valued at

¹ Nancy Berryhill became the Acting Commissioner of Social Security as of January 23, 2017. Accordingly, the court has amended the caption to substitute Ms. Berryhill as the defendant in this action.

\$2,000. Id. at 3. The plaintiff states that he has \$300 in a checking account. Id. at 3. The plaintiff indicates that he has monthly expenses of \$173 in car payments, \$129 for car insurance, \$50 for his cell phone, and \$40 for home owner's insurance. Id. at 2. The court concludes from that information that the plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

In his complaint, the plaintiff asserts that "the Commissioner's unfavorable conclusions and findings of fact are not supported by substantial evidence; and/or are contrary to law and regulation." Dkt. No. ` at 2. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of the Commissioner's decision, and that the

appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **ORDERS** that the plaintiff's motion for leave to appeal *in forma pauperis* (Dkt. No. 3) is **GRANTED**.

Dated in Milwaukee, Wisconsin this 3rd day of February, 2017.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line extending to the right.

HON. PAMELA PEPPER
United States District Judge